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9 **UNITED STATES DISTRICT COURT**

10 **DISTRICT OF NEVADA**

11 COPPER SANDS HOMEOWNERS
12 ASSOCIATION, INC., a Nevada non-profit
13 corporation; MARCIA JARRETT; CHARLES
14 WOOD; RICHARD DRESSLER; RICHARD
EMANUEL; PAUL DOYLE; ARLENE
15 MARENTIC; BOJAN NENADIC; EVERETT F.
CROXSON; MYRA SCHULTZ; STEVEN
16 GAZZA; MILORAD JAGROVIC; DAVID G.
FERGUSON; JANE SOO HOO LUI; ZUI YI
17 QIU; DORON GERBY; CATALIN NISTOR;
18 and HILARY GARBER, on their own behalf
and on behalf of all others similarly situated;
19 and POE HOMEOWNERS 1-2000,

20 Plaintiffs,

21 vs.

22 COPPER SANDS REALTY, LLC, a Delaware
23 limited liability company; ROBERT
24 COLUCCI, an individual; DARIO DELUCA,
an individual, a/k/a DARIO DE LUCA; CBC
25 INVESTMENTS, INC., a Nevada corporation;
JIM CERRONE, an individual; COMPLEX
26 SOLUTIONS, LIMITED, a Nevada limited
27 liability company; COPPER SANDS
INVESTORS LP, a Nevada limited
28 partnership; COUNTRYWIDE HOME

Case No: 2:10-cv-00510-GMN-GWF

**ORDER GRANTING COMPLEX
SOLUTIONS, LIMITED'S MOTION
FOR DETERMINATION OF GOOD
FAITH SETTLEMENT, EXCEPT AS
TO DEFENDANT IRWIN MORTGAGE
CORPORATION (#271)**

1 LOANS, INC., a New York Corporation; CS
2 CONSULTING SERVICE, LLC, a Nevada
3 limited liability company; TERESA
4 CUSHMAN, an individual; RENATO
5 DELUCA, an individual, a/k/a RAY DELUCA
6 and RAY DE LUCA; DFT, INC., a California
7 corporation, d/b/a THE CANNON
8 MANAGEMENT COMPANY; SHAWN HEYL,
9 an individual; LYNDA HOANG, an individual;
10 IRWIN MORTGAGE CORPORATION, an
11 Indiana corporation; BRENT JONES, an
12 individual; BRENT JONES SERVICES, INC.,
13 a Nevada corporation; MANIETTA
14 ELECTRIC, INC., a California corporation;
15 MORTGAGE LOAN SPECIALISTS, INC., a
16 California corporation; PACIFICA
17 ENTERPRISES HOLDINGS LP, a California
18 limited partnership; PACIFICA
19 ENTERPRISES, INC., a California
20 corporation; PACIFICA ENTERPRISES LLC,
21 a Nevada limited liability company;
22 PACIFICA MARKETING SERVICES, LLC, a
23 Nevada limited liability company d/b/a
24 "CONDO CLUB", "CONDO CLUB LAS
25 VEGAS", and "CONDO CLUB - LAS
26 VEGAS"; PACIFICA REAL ESTATE
27 INVESTMENTS, INC., a California
28 corporation; PLASTER DEVELOPMENT
COMPANY, INC., a Nevada corporation,
d/b/a "SIGNATURE HOMES" and
"SIGNATURE HOMES, INC."; PREMIERE
COMMUNITIES, INC., a Nevada corporation;
PREMIER FINANCIAL, LLC, a California
limited liability company; PREMIER REALTY
SERVICES, INC., a California corporation;
PREMIER RESIDENTIAL, INC., a California
corporation; VIMARK RE ENTERPRISES
LLC, a California limited liability company;
DOES 1-100, inclusive; ROE
CORPORATIONS 1-100, inclusive; ROE
BUSINESS ENTITIES 1-100, inclusive; and
ROE GOVERNMENTAL ENTITIES 1-20,
inclusive,

Defendants.

1 The Motion for Determination of Good Faith Settlement (Court Document
2 #271) by Defendant COMPLEX SOLUTIONS, LIMITED after consideration of all
3 suggestions of the automatic stay, oppositions, objections, replies, sur-replies,
4 supplements and joinders, and after hearing upon the motion on May 22 & 29,
5 2012, is hereby ruled upon by this Court.

6 **I. SUMMARY OF ARGUMENTS**

7 Defendant COMPLEX SOLUTIONS, LIMITED (hereinafter "COMPLEX
8 SOLUTIONS") requests this Court enter an Order granting a determination that
9 COMPLEX SOLUTIONS' settlement with Plaintiffs is in good faith as referenced
10 by NRS 17.245. In support of their motion, COMPLEX SOLUTIONS posit a
11 settlement sum of \$125,000.00 is fair and sufficient for settlement of all claims by
12 the Plaintiffs in light of the circumstances of the litigation and COMPLEX
13 SOLUTIONS. In particular, COMPLEX SOLUTIONS maintains the \$125,000.00
14 settlement sum is fair and sufficient due to fact that the settlement was reached
15 during arms-length bargaining during a private mediation session with a
16 professional mediator, Ara Shirinian.

17 Defendants COPPER SANDS REALTY, LLC, ROBERT COLUCCI,
18 DARIO DE LUCA, COPPER SANDS INVESTORS, LP, RENATO DE LUCA,
19 PACIFICA ENTERPRISES HOLDINGS, LP, PACIFICA ENTERPRISES, INC.,
20 PACIFICA ENTERPRISES, LLC, PACIFICA REAL ESTATE INVESTMENTS,
21 INC., PACIFICA REAL ESTATE SERVICES, INC., and VIMARK RE
22 ENTERPRISES, LLC (hereinafter "COPPER SANDS Defendants") filed a timely
23 "limited" Opposition, wherein they objected to COMPLEX SOLUTIONS' request
24 for the Court to adjudicate claims that were not before the Court, or issue an
25 advisory opinion on the application of theoretical claims.

26 Co-Defendant, IRWIN MORTGAGE CORPORATION, a Chapter 11
27 debtor and debtor in possession, reasserted its suggestion of stay with respect to
28 COMPLEX SOLUTIONS' motion and argues that an unlimited determination of

1 good faith settlement or any resulting application of NRS 17.245 to IRWIN
2 MORTGAGE CORPORATION, including any application of this Order, or of any
3 of the other parties' filings or arguments, would be in contravention of the
4 automatic bankruptcy stay. At the hearing on May 22, 2012, as well as on May
5 29, 2012, counsel for IRWIN MORTGAGE CORPORATION argued that because
6 of the automatic stay, any determination of COMPLEX SOLUTIONS' motion
7 could not have any binding effect upon IRWIN MORTGAGE CORPORATION
8 and could not be an adjudication of IRWIN MORTGAGE CORPORATION'S
9 interests.

10 In response to the position taken by IRWIN MORTGAGE
11 CORPORATION, COMPLEX SOLUTIONS has modified its request for a
12 Determination of Good Faith Settlement, and now requests that this Court make
13 a limited determination of good faith settlement such that neither the
14 determination nor any aspect of NRS 17.245 have application to IRWIN
15 MORTGAGE CORPORATION.

16 Further, with respect to the limited Opposition filed by the COPPER
17 SANDS Defendants, COMPLEX SOLUTIONS clarifies that there are no pending
18 claims against it in this action other than those of the Plaintiffs, and that a
19 determination of good faith settlement would only give rise to a potential
20 affirmative defense. Moreover, COMPLEX SOLUTIONS is simply seeking a
21 ruling from this Court that its settlement with Plaintiffs was made in good faith
22 pursuant to NRS 17.245.

23 **II. FINDINGS AND ORDER**

24 Based upon the foregoing, COMPLEX SOLUTIONS Motion for
25 Determination of Good Faith Settlement (#271) is GRANTED consistent with the
26 following:

27 The Court concludes the automatic stay of the instant litigation resulting
28 from IRWIN MORTGAGE CORPORATION's bankruptcy precludes application of

1 a determination of good faith settlement and NRS 17.245 to IRWIN MORTGATE
2 CORPORATION. Therefore, the Court hereby determines the settlement
3 between COMPLEX SOLUTIONS and Plaintiffs to be in good faith as further
4 explained below, but hereby limits the findings and this Order such that neither
5 the instant determination of good faith nor NRS 17.245 or any related matter
6 have any application to IRWIN MORTGAGE CORPORATION. This Order
7 (including the Summary of Argument and the Findings) is not an adjudication of
8 any rights or interests of IRWIN MORTGAGE CORPORATION and has no
9 binding or preclusive effect upon IRWIN MORTGAGE CORPORATION.
10 However, COMPLEX SOLUTIONS reserves its rights, if any, to file a later motion
11 for a de novo determination of good faith settlement and application of NRS
12 17.245 as to IRWIN MORTGAGE CORPORATION should it seek to assert
13 claims against COMPLEX SOLUTIONS. IRWIN MORTGAGE
14 CORPORATION'S rights to oppose any such motion on the merits, or otherwise,
15 are specifically preserved.

16 Subject to the foregoing exclusion of IRWIN MORTGAGE
17 CORPORATION, the Court has considered the factors for determination of good
18 faith settlement outlined in the holding of *In re MGM Grand Litigation*, 570
19 F.Supp. 913 (1983), and hereby finds the settlement between COMPLEX
20 SOLUTIONS, LIMITED and Plaintiffs to be in good faith pursuant to NRS 17.245.
21 Based upon the substantive obstacles to recovery by Plaintiffs upon their claims
22 against the COMPLEX SOLUTIONS, as referenced by COMPLEX SOLUTIONS
23 in its moving papers, the Court finds the settlement sum of \$125,000.00 to be fair
24 and sufficient in the totality circumstances. There has also been no evidence or
25 suggestion presented of any collusion between COMPLEX SOLUTIONS and
26 Plaintiffs, and there has been no evidence or suggestion of any aim or intent by
27 COMPLEX SOLUTIONS or Plaintiffs to injure the interests of any non-settling
28

1 Defendants by virtue of the settlement between COMPLEX SOLUTIONS and
2 Plaintiffs.

3 Based upon the foregoing findings, and subject to the above stated
4 limitations, the Court hereby provides this Order that the settlement between
5 COMPLEX SOLUTIONS and Plaintiffs is determined to be in good faith pursuant
6 to NRS 17.245.

7 **IT IS SO ORDERED** this 18th day of June, 2012.

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12 Gloria M. Navarro
13 United States District Judge

14 Submitted by:

15 THORNDAL, ARMSTRONG, DELK,
16 BALKENBUSH & EISINGER

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18 _____
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28 **COMPLEX SOLUTIONS, LIMITED**